United States Court of Appeals

for the

District of Columbia Circuit

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BRIEF FOR APPELLANT

048

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 21,200

WILLIS M. DANIELS, Jr.,

Appellant

v.

UNITED STATES OF AMERICA

Appellee

Appeal from a judgment of the
UNITED STATES DISTRICT COURT
for the District of Columbia

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STATEMENT OF QUESTIONS PRESENTED

Whether the rights of appellant under the Fourth Amendment to the Constitution were violated by reason of his warrantless arrest and the search of his person incident thereto.

Whether the trial court erred in denying appellant's motion for suppression of evidence seized in said search, and in permitting said evidence to be introduced at trial.

UNITED STATES COURT OF APPEALS

For The District of Columbia Circuit

NO. 21,200

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JURISDICTIONAL STATEMENT

The appellant appeals from a conviction in the United States District Court for the District of Columbia on a charge of violation of 22 D. C. Code 2901 (robbery), for which appellant was sentenced on June 16, 1967, to imprisonment for a period of eighteen to fifty-four months (Cr. No. 1149-66).

Appellant duly filed a pro se application for leave to proceed on appeal without prepayment of costs, and said application was granted on July 10, 1967 by the Honorable Richmond Keech, Judge, United States District Court for the District of Columbia.

The jurisdiction of this Court on appeal in this case is founded upon the Act of June 21, 1958, 62 Stat. 929, U. S. C. Title 28, Sec. 1291.

STATEMENT OF THE CASE

Appellant was arrested without a warrant on September 5, 1966, on a charge of robbery by purse snatching. On September 26, 1966, appellant was indicted by the Grand Jury for robbery of a pocketbook and its contents from the person of one Marie C. Belda, in violation of 22 D. C. Code 2901. Appellant was arraigned on

October 14, 1966 in the presence of court appointed counsel. A plea of "not guilty" was entered.

On October 28, 1966, appellant moved for the return of personal property seized from him following his arrest, and for the suppression as evidence of said property, consisting of "two or three dollars and change and a rosary." Said motion was based on the ground that appellant's arrest was made without a warrant and without probable cause and was therefore illegal, and that the search of his person and the seizure of said property was an incident to said unlawful arrest.

Said motion was heard and denied on December 9, 1966, by the Honorable Burnita Sheldon Matthews, Judge, United States District Court for the District of Columbia.

Trial began on April 24, 1967. Over objection of counsel for defendant (Tr. 89, 90), there was admitted in evidence the rosary which had been taken from the person of defendant, following testimony by a police officer that the rosary had been found on the person of defendant following his arrest (Tr. 63-65, 74, 76), and testimony by the victim of the robbery that the rosary was her property and had been in the purse which was taken from

her (Tr. 15-17).

The facts disclosed by the record concerning the robbery and the arrest and search of the appellant are the following. The victim of the robbery was an elderly retired woman, named Marie C. Belda, 71 years old, who was walking westward on Park Road at Pine Street, N.W., near 16th Street, when her purse was seized by a man and pulled from her grasp with such force that she was thrown to the ground (Tr. 10, 12, 14, 23, 26, 39). The robber fled east through an alley toward Hiatt Place where the victim lost sight of him (Tr. 12, 18, 19). The robbery occurred on September 5, 1966, at 4:50 P.M. (Tr. 11, 22).

At 4:55 P.M. a police radio "lookout" was broadcast and was heard by Detective Vertice J. Gore and Officer Jasper E. Fletcher, who were patrolling in the vicinity of 16th and Fuller Streets in a car driven by Officer Fletcher (Tr. 61, 69, 72). The radio call was for a robbery at 16th and Pine Streets, Northwest and described the suspect as a Negro male, about six feet, medium complexion, medium build and wearing a yellow shirt and yellow trousers (Tr. 62, 68, 78, 79).

In response to the radio call, Private Fletcher drove to 16th and Irving, then to 14th and Irving, and

then south on 14th Street to Harvard (Tr. 72). On the southwest corner of 14th and Harvard Streets, the two police officers saw appellant, whom they said met the description contained in the police lookout broadcast (Tr. 62, 73). The police officers stopped their car and got out, and as appellant started to walk away, they called to appellant to stop, which he did. They told appellant that he met the description of a man wanted for robbery, and asked him to accompany them "to be identified" (Tr. 63, 65, 68, 73). The time of the apprehension of appellant was estimated by Detective Gore to be approximately 5:05 P.M. (Tr. 69, 71) and by Private Fletcher to be 5:20 P.M. (Tr. 77, 79).

At the request of the policemen, appellant got into their car and was taken to 16th Street and Columbia Road, where he was shown to the victim, who was said to have identified him as the man who robbed her (Tr. 67, 68, 69, 74). Appellant was then searched, and the police removed from his person some money, personal effects, two religious medals and a rosary (Tr. 63, 64, 65, 69, 74).

No testimony was offered or introduced by the prosecution concerning the source, credibility or reliability of the information upon which the police radio

lookout was based The only reference to the source of the information transmitted in the radio call was a question by the prosecution if Officer Fletcher knew who gave the description that came over the radio, and Officer Fletcher's answer that he did not know (Tr. 79).

STATUTES

Constitution of the United States, Amendment IV:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF POINTS

The arrest of appellant was without a warrant and without probable cause, and was an unlawful arrest.

When a search is made of a person as an incident to an arrest and without a warrant, and if the arrest is unlawful, said search is in violation of Amendment IV to the Constitution of the United States.

When the lawfulness of an arrest without a warrant is attacked, the burden is upon the prosecution to produce evidence establishing that there was probable cause for the arrest.

The requisite showing of probable cause for making an arrest without a warrant must be at least equal to the showing that would have been required to secure a warrant for said arrest.

The prosecution failed to make the requisite showing of probable cause for the arrest.

SUMMARY OF ARGUMENT

Appellant was arrested without a warrant. The only reason for the arrest was that appellant fitted the description contained in a police radio lookout for a man suspected of robbery.

After the arrest, appellant was taken to another place and was searched without a warrant, as an incident to his arrest. There was found on his person, and seized by the arresting officers, a rosary that was subsequently identified as having been part of the property taken from the victim of the robbery.

Appellant moved for suppression of the rosary as evidence, on the ground of illegal search and seizure incident to an unlawful arrest, and the motion was denied.

The rosary was identified as the property of the victim and was introduced in evidence at trial, over objection of appellant, after testimony by the arresting officers that the rosary had been found on the person of appellant in a search made after his arrest.

The legality of the arrest having been attacked, the burden was on the prosecution to show that the information upon which the arrest was based was sufficiently reliable and trustworthy to have met the requirements for

the issuance of a warrant of arrest.

The prosecution presented no evidence as to the source, reliability or trustworthiness of the information upon which the police radio call was based and upon which the arrest of appellant was predicated.

In the light of the evidence there can be no presumption that the police radio call or the description therein set forth was based on information supplied by the victim. There is nothing in the record showing the basis for the police radio call.

The prosecution failed to establish probable cause for the arrest, and the attack on the lawfulness of the arrest and the search and seizure incident thereto, should have been sustained.

ARGUMENT

(1) Appellant was arrested before he was identified by the victim and before he was searched.

The arrest of appellant occurred at 14th and Harvard Streets where he was accosted, stopped, told that he met the description of a man wanted for robbery, and asked to accompany the police officers to another place "to be identified". Although appellant apparently was not told in so many words that he was under arrest, and although he consented to get into the police car and accompany the officers to another place, there was no doubt in the mind of either officer that appellant had been taken into custody and that they would not have permitted him to leave. The following questions were asked and answers made by Officer Fletcher at the hearing on the motion to suppress evidence (Transcript of Proceedings on Motion to Suppress, et al., December 9, 1966, at Page 8):

> Q. And did he agree to accompany you to the place you asked him to go?
>
> A. Yes, he did.

Q. And if he at that time had attempted to leave or not accompany you, would you have allowed him to go away?

A. No, I would not have.

At the trial, during the course of cross-examination of Detective Gore, defense counsel made a suggestion that Detective Gore had indicated to appellant an intention to release appellant before his identification by the victim. The following question was asked by the Court and Detective Gore made the following answer (Tr. 69):

THE COURT: Excuse me, sir. You assume he determined to let him loose. Did you determine to let him loose?

THE WITNESS: I had not even thought about it, not until after she identified him. I did not consider turning him loose.

In order for there to be an arrest, it is not necessary that there be an application of actual force or manual touching of the body or physical restraint which may be visible to the eye, or a formal declaration of arrest. It is sufficient if the person arrested understands that he is in the power of the one arresting, and submits in consequence. Coleman v. United States,

111 U. S. App. D. C. 210, 295 F.2d 555 (1961), cited with approval in Kelley v. United States, 111 U. S. App. D. C. 396, 298 F.2d 310 (1961).

As was said in Kelley, supra, appellant "would have been rash indeed to suppose he was not under arrest" after he had been told by two police officers to stop walking down the street, that he fitted the description of a person who had committed a robbery, and had been asked to get into a police car to be taken to another place "to be identified" (Tr. 63, 65, 68, 73).

The term "arrest" applies in any case where a person is taken into custody or restrained of his full liberty, or where detention is continued even for a short period of time. United States v. Scott, 149 F. Supp. 837 (D. D. C., 1957). A man is under arrest at that point where an officer has effectively restrained him and he is cognizant of that restraint, not only when the officer formally proclaims that he is being taken into custody. United States v. Washington, 249 F. Supp. 40 (D. D. C., 1965).

(2) Unless the arrest of appellant was lawful, the search of his person was in violation of his Constitutional rights.

The Fourth Amendment to the Constitution provides protection against unreasonable searches and

seizures, and the law is well settled that a search made without a warrant will be permitted only where it is an incident to a lawful arrest. Wrightson v. United States, 95 U. S. App. D. C. 390, 222 F.2d 556, 560 (1955). United States v. Di Re, 332 U. S. 581 (1948).

No warrant for the arrest or for the search of appellant had been issued, and both the arrest and search of appellant were without warrant (Transcript of Proceedings on Motion to Suppress, et al., December 9, 1966, at P. 6).

(3) The prosecution failed to make the requisite showing of probable cause for the warrantless arrest of appellant, and the arrest and search incident thereto were unlawful.

There is no statute in the District of Columbia that confers upon policemen the right to make arrests without warrants for crimes committed outside of their presence and of which they have no personal knowledge. In the absence of any such statute, this court has adopted and has declared to be the rule in this jurisdiction the common law principle that "a law officer may arrest without a warrant where a felony has been committed and there is reasonable cause to believe the arrested person committed it." Smith v. United States, 102 U. S. App.

D. C. 48, 254 F.2d 751 (1958). This rule had previously been announced as applicable to the District of Columbia in somewhat different words in Shettel v. United States, 72 U. S. App. D. C. 250, 113 F.2d 34 (1940), where this Court said (35): ". . .it is axiomatic that where a felony has been committed, a police officer. . .who has information in regard thereto, may arrest, without warrant, a person believed by the officer, upon reasonable cause, to be guilty of the felony . . ." citing Carroll v. United States, 267 U. S. 132 (1925).

In the Carroll case, the Supreme Court had said (p. 157):

> ". . .the reason for arrest without warrant on a reliable report of a felony was because the public safety and the due apprehension of criminals charged with heinous offenses required that such arrests should be made at once without warrant. . ."

In Brinegar v. United States, 338 U. S. 160 (1949), cited by this Court in Stephens v. United States, 106 U. S. App. D. C. 249, 271 F.2d 832 (1959), the Supreme Court said (p. 175):

> "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are]

> sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed . . ." (Citations omitted).

In the more recent case of Beck v. State of Ohio, 379 U. S. 89 (1964), the Supreme Court said (p. 91):

> "Whether [an] arrest was constitutionally valid depends in turn upon whether, at the moment the arrest was made, the officers had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." (Citations omitted).

Thus the Supreme Court has stressed the necessity for one or both of two prerequisites to the making of a valid warrantless arrest--facts within the personal knowledge of the arresting officers, and "reliable" and "reasonably trustworthy" information which they had received.

In two recent decisions, the Supreme Court has endorsed a minimum test or standard for determining whether "probable cause" exists for a warrantless arrest. It can be no less than is required for the securing of a warrant.

In Wong Sun v. United States, 371 U. S. 471 (1963), the Court said (pages 479-480):

> "Whether or not the requirements of reliability and particularity of the information on which an officer may act are more stringent where an arrest warrant is absent, they surely cannot be less stringent than where an arrest warrant is obtained Otherwise, a principal incentive now existing for the procurement of arrest warrants would be destroyed. The threshhold question in this case, therefore, is whether the officers could, on the information which impelled them to act, have procurred a warrant for the arrest of Toy. . ." (Emphasis supplied).

The decision in Wong Sun was cited with approval by the Supreme Court in Beck v. Ohio, supra:

> When the validity of an arrest is under attack, the burden is on the prosecution to establish with particularity that the information upon which the arrest was made would have been sufficient for the issuance of a warrant of arrest.

In Wrightson v. United States, supra, this Court said (pages 558-560):

> "Courts cannot put a stamp of approval upon actions of the police when the officers, challenged by an accused, fail or refuse to demonstrate compliance with the rules which circumscribe their authority. . .

* * *

". . .But, if officers can arrest without a warrant and never be required to disclose the facts upon which they based their belief of probable cause--if, in other words, they have an untouchable power to arrest without a warrant,--why would they ever bother to get a warrant? And the same obvious conclusion follows if the courts, when an arrest is attacked as illegal, will assume, without facts, that an arrest without a warrant was for probable cause. . ."

* * *

"In the case at bar, the arrest cannot stand under attack in the absence of any factual showing that the officers at the time of arrest had probable cause to believe that Wrightson had committed the crime. Since the arrest cannot stand, the search, incident to it and without a warrant, also falls."

The Wrightson decision was cited with approval, and the second paragraph of the above quotation appears in a footnote in the Wong Sun decision of the Supreme Court, supra.

The necessity for full disclosure of the source and reliability of information upon which a warrantless arrest is based, when the legality of that arrest is under attack, was restated and emphasized by the Supreme Court in Beck v. Ohio, supra, in the following words (pages 96, 97):

"When the constitutional validity of an arrest is challenged, it is the function of a court to determine whether the facts available to the officers at the moment of the arrest would 'warrant a man of reasonable caution in the belief' that an offense has been committed, Carroll v. United States, 267 U. S. 132. . .If the Court is not informed of the facts upon which the arresting officers acted, it cannot properly discharge that function. . .

* * *

"It is possible that an informer did in fact relate information to the police officer in this case which constituted probable cause for the petitioner's arrest. But when the constitutional validity of that arrest was challenged, it was incumbent upon the prosecution to show with considerably more specificity than was shown in this case what the informer actually said, and why the officer thought the information was credible. . ." (Emphasis supplied).

The legality of the arrest and the search that was incident thereto was challenged in the present case, by the motion to suppress evidence so the prosecution was put on notice of the necessity to put in evidence facts sufficient to show probable cause for the arrest. The prosecution failed to do so.

The only facts disclosed by the record in this case as to the cause for the arrest of appellant are (1) that the arresting officers heard a police radio "lookout" reciting that a robbery had occurred at 16th and Pine Streets and giving a description of a suspect,

and (2) that appellant, who was standing on a street corner a few blocks away met the description in the radio call.

The only cause the officers had for believing that a felony had been committed or that appellant had committed it was the police radio "lookout", and the fact that appellant "fitted the description" of the suspect.

The fact that appellant did not object to being stopped, and that he agreed to get in the car with the officers, and that he did not resist the search of his person, do not constitute or give rise to any inference of probable cause for his arrest. United States v. Di Re, 332 U. S. 581, 594-595 (1948).

Nor can probable cause for arrest be shown by the fact that appellant was identified following the arrest as the person who committed the robbery, or by the fact that the search of his person following his arrest and incident thereto produced evidence of his guilt. This was squarely held in the Di Re case where the court cogently said that a search is not to be made legal by what it turns up, and that if an arrest was unlawful, so were the fruits that flowed from it.

Applying the test prescribed in Wong Sun and Beck, supra, the following question arises: Could the arresting officers have secured a warrant for the arrest of appellant by telling a magistrate the basis for the desired warrant, i.e., that they had heard a police radio lookout and that appellant fitted the description therein contained?

There surely can be no doubt that insufficient grounds would exist for the issuance of a warrant of arrest. Such a set of facts would not meet the requirements prescribed in Aguilar v. State of Texas, 378 U. S. 108 (1964) for the issuance of a warrant. The Supreme Court there held in effect that in the absence of a showing that the applicant for the warrant had personal knowledge of a felony or the suspect's participation therein, and because of failure of the applicant to indicate the source of the information upon which he based his belief, a warrant could not properly issue. In the present case, the arresting officers could not even go as far as was done in Aguilar. Officer Fletcher testified that he did not know the source of the information upon which the police broadcast was based. (Tr. 79).

The facts here differ greatly from those in

Draper v. United States, 358 U. S. 307 (1959), in which an arrest without a warrant and a search incident thereto were held to be lawful. In Draper, the prosecution introduced evidence that the information upon which the arrest was based came from an informant who was a "special employee" of the Bureau of Narcotics; that the informant told the arresting officer that Draper was peddling narcotics, and that the informant had given precise details of the activities of Draper that were personally verified and found to be true by the arresting officer before the arrest was made. No showing even remotely comparable to that made in Draper was made in the present case.

There is no particular or peculiar sanctity attaching to a police broadcast. The fact that information is broadcast does not make it any more reliable or trustworthy than would be the unsupported statement of a policeman. There is no logical or rational difference between an application for a warrant based on a police broadcast, and an application based upon a direct word-of-mouth statement by one policeman to another that a felony had been committed and that the suspect had certain characteristics. In either case, the crucial test

is the credibility, reliability or trustworthiness of the information upon which the broadcast or the oral communication is based.

The record fails completely to reveal the source of the information broadcast in the police lookout. Since there was no disclosure of the source of the information, there is no possible means of appraising its credibility or reliability. For all that appears in the record, the information in the broadcast may have come in a telephone call from another robber, seeking to divert suspicion from himself to another, or to cause trouble for an enemy.

Appellant has found four decisions of this Court involving arrests and resulting searches in which police broadcasts have played a part. The first of these cases, Gatlin v. United States, 117 U. S. App. D. C. 123, 326 F.2d. 666 (1963), dealt with the arrest of a suspect who met a description in a radio lookout, but who was apprehended at a considerable distance from the scene of the crime and considerably after the time of the robbery. The arrest was held to be unlawful.

The second and third of the radio lookout cases, Kennedy v. United States, 122 U. S. App. D. C. 291, 353

F.2d 462 (1965), and Smith v. United States, 122 U. S. App. D. C. 300, 353 F.2d 838 (1965), both involved facts and circumstances leading to the arrest beyond the mere existence of the radio broadcast and similarity of the defendant to the broadcast description.

The fourth case, Brown v. United States, 124 U. S. App. D. C._____, 365 F.2d 976 (1966), involves facts and issues sufficiently similar to those in the instant case to warrant analysis and discussion. In Brown two policemen in a squad car stopped another car at 4:30 A.M. for having a defective tag light. One policeman was questioning the driver when the other heard a police radio call reporting the robbery of a nearby motel, with a lookout for a heavily built Negro driving a maroon 1954 Ford. As the car and the driver met the description, the second policeman warned the first of the broadcast. They asked for additional information from the police dispatcher, decided that the driver of the car met the description, and searched his car, finding evidence connecting him to the robbery. The defendant moved to suppress the evidence because of lack of probable cause for his arrest for robbery. The motion was denied, and Brown was convicted.

In its decision upholding the conviction, this court remarked that the information in the broadcast "was sufficiently particular to lead the officers directly to the suspect", and mentioned the high degree of improbability that there would be two ten year old maroon Fords in the same locality at 4:30 A.M. driven by a heavily built Negro. The court decided that although there were minor discrepancies between the broadcast description and the actual facts, "appellant and his car reasonably matched the description received," and that "the accurate portion of the identification. . .was by itself enough to constitute probable cause that appellant was the one sought."

The court proceeded on an assumption that the description in the police broadcast came from the victim, because of the following statement:

> "That the information came from an unknown victim of the crime did not preclude the policeman's having probable cause to arrest appellant on the basis of it. Although the police could not here judge the reliability of the information on the basis of past experience with the informant, compare Draper v. United States, 358 U. S. 307 (1959). . .the victim's report had the virtue of being based on personal observation, a factor stressed in Aguilar v. United States [sic], 378 U. S. 108 (1964). . .and is less likely to be colored by self-interest

> than is that of an informant. Admittedly, a crime victim's observation may be faulty in some respects, as it may have been here; however, the mistakes are irrelevant if there is sufficient particularized information to constitute probable cause. . . ."

The decision in Brown does not disclose the basis for the Court's finding that the description of the robber originated with the victim and was based on the victim's personal observation. Possibly the record of testimony disclosed these facts to be true. Possibly the Court reached these conclusions on the theory that a great majority of police broadcasts of lookouts come from victims or eye witnesses of crimes. If the latter, appellant questions both the wisdom and the propriety of any such assumption of fact, in the absence of evidence supporting it, when the legality of an arrest is under attack.

In the recent decision in McCray v. State of Illinois, 87 S.Ct. 1056, 35 U. S. Law Week 4251 (March 21, 1967), the Supreme Court held that hearsay may be the basis for a warrantless arrest, provided the person supplying the information to the police had personal knowledge of the fact alleged. There the police testified that the informant had told them he had seen the suspect selling narcotics, and had made personal

observations of such sales. This testimony as to personal knowledge, coupled with a past history of reliability on the part of the informant, and additional details verified by the police, was enough for the officers to conclude that the information was credible and reliable.

But this is far different from an assumption by a court, unsupported by evidence in the record, that a police broadcast of a crime and a description of a suspect were based on the personal observation of the victim or of an eye witness. It runs squarely afoul of the well established principle, recognized by this Court as well as by the Supreme Court, that when an attack is made on the legality of a warrantless arrest, the prosecution has the obligation to present proof that the information upon which the arrest was based was credible and reliable.

While appellant contends that the court should not make assumptions of critical facts in the absence of evidence to support such assumptions, when the validity of an arrest is under attack, appellant urges that the record in this case affirmatively suggests that the radio description which was the basis for his arrest

did not originate with or come from the victim, but must have come from some other source, which, for some reason unknown to appellant, the prosecution was unwilling to reveal. The facts upon which this contention is made are the following:

The robbery occurred at 4:50 P.M. (Tr. 11, 22) on Park Road at its intersection with Pine Street, near 16th Street, Northwest (Tr. 22, 23). The victim was an old lady, 71 years of age (Tr. 39). Her purse was pulled from her possession by the robber with such force that the victim, Mrs. Marie Belda, was thrown to the pavement (Tr. 12, 14). Her hip and arm were injured as a result of the fall (Tr. 17). She got to her feet as the robber ran off, and tried to follow him, but she could not run (Tr. 17, 18) and could hardly walk because of the injury from her fall (Tr. 12). She had lost a shoe (Tr. 20) and was sick (Tr. 27). The robber went through an alley running toward Hiatt Place, and Mrs. Belda made her way to Park Road and Hiatt Place (Tr. 18) where she had a conversation with a woman sitting on a bench who told her the direction in which the running man had gone (Tr. 18, 21, 22, 54, 55). The victim went through an alley to

Murphy's Store on 14th Street,[1] trying to find a policeman. She could not find one and decided to go home. She walked across 14th Street and then toward the Tivoli Theater[2] where she szw a policeman and told him what had happened to her (Tr. 20, 26, 27). The only description of the robber given by the victim to the policeman was that he was a Negro wearing a yellow shirt and yellow trousers (Tr. 27-30). She may have said the color was beige or that it was a light outfit (Tr. 30. Transcript of Proceedings on Motion to Suppress, p. 23).

The evidence is undisputed that the robbery occurred at 4:50 P.M. and that the police radio call upon which the arrest was based was received by the arresting officers at 4:55 P.M. It is incredible that this old lady, bruised and crippled and sick from her fall, with one shoe missing, could have hobbled from a point near 16th Street, east along Park

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1/ Shown by the Washington Metropolitan Telephone Directory to be located at 3128 14th St., N.W., Wash. D. C.

2/ Shown by the Washington Metropolitan Telephone Directory to be located at 3301 14th St., N.W., Wash, D. C.

Road to Hiatt Place, south on Hiatt to an alley leading to 14th Street in the 3100 block, across 14th Street and north to the 3300 block of 14th Street, where she first saw a policeman, and had given him a sufficient description for him to arrange for the police broadcast, all in five minutes.

It may be of significance that the prosecution never produced any evidence and in fact never suggested, that the police radio call or the description thereby disseminated had originated with the victim.

In the light of the evidence in the record, there can be no presumption or inference that the police radio broadcast was based on information supplied by the victim, and the reasoning of this Court in Brown v. United States, supra, can have no application here.

The prosecution failed to produce evidence from which either the trial court or this court could conclude or find that the police radio call was based on information sufficiently trustworthy and reliable to cause the issuance of a warrant of arrest.

(4) Appellant does not contend that a lawful arrest cannot be made on the basis of a police radio broadcast.

It is important that the Court understand that appellant does not challenge or attack the legality of all arrests made as a result of police radio calls.

Appellant concedes that radio communication between policemen is a very important weapon in law enforcement, and that law enforcement would be greatly hampered if a policeman could not apprehend and take into custody a person he has reason to believe has committed a felony, on the basis of information obtained by other members of the police force and disseminated by radio as well as by word-of-mouth.

The police force of a city should be considered as a cohesive unit, and knowledge or information gained by one or more members or segments of the force and disseminated throughout the force should be considered to be the collective knowledge of the force. Each individual policeman to whom that knowledge or information is disclosed should have the same power to act thereon as has the

policeman who first acquired it. Therefore, a policeman in a squad car, receiving information by police radio, should have the same power to act thereon as would the officer or officers who first acquired the information and who caused it to be broadcast.

But the policeman in the squad car can have no greater right to make an arrest, merely because of the intervening use of a police radio, than did the officer who caused the broadcast to be made.

When an attack is made on the legality of an arrest based on information in a police radio call, then the burden is upon the prosecution to show that the information upon which the radio call was based was reliable and reasonably trustworthy. This is not an unreasonable burden, nor one that would seriously hamper effective law enforcement. It could be done, if the Court adheres to the reasoning in Brown v. United States, supra, by testimony that the broadcast was based on statements made by the victim to a police officer, or it could be done by evidence of personal observation and knowledge by the officer originating the broadcast, or it could be done by

otherwise showing the reliability and trustworthiness of the information, including personal knowledge of an informant.

This appeal is not based on the bare fact that appellant's arrest was made as the result of a police radio call. It is based on the fact that, after the legality of the arrest was brought under attack by the motion to suppress evidence, the prosecution failed to produce any evidence concerning the source, reliability or trustworthiness of the information that resulted in the police radio call and the actions flowing therefrom. The record is barren of any evidence establishing reasonable cause for this warrantless arrest.

CONCLUSION

Under these facts, the arrest cannot be found to have been a lawful one, and the search made as a result thereof and incident thereto, was in violation of the Fourth Amendment to the Constitution.

Respectfully submitted,

George B Haddock

George B. Haddock
Counsel for Appellant
(Appointed by this Court)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Appellant has been served upon Appellee by hand-delivery thereof to the United States Attorney at the United States Courthouse, Constitution Avenue and John Marshall Place, Washington, D. C., on the 1st day of December, 1967.

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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,200

WILLIS M. DANIELS, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

DAVID G. BRESS,
United States Attorney.

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Cr. No. 1149-66

QUESTION PRESENTED

In the opinion of appellee the following question is presented:

1) Whether the Government established that the police had probable cause to apprehend appellant, take him a few blocks where he could confront the victim and, upon being identified by the victim as the purse snatcher, arrest and search him, where the Government established that

(a) a police officer received a report from the victim that her purse had been snatched by an assailant whom she described,

(b) the officer reported the offense to headquarters,

(c) a robbery lookout was broadcast describing the assailant,

(d) appellant matched the description given and was found about 20 minutes after the offense within three and one half blocks of the scene of the robbery, and

(e) the officers who apprehended appellant did so pursuant to the lookout.

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TABLE OF CASES

OTHER REFERENCES

*Cases chiefly relied upon are marked by asterisks.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,200

WILLIS M. DANIELS, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On September 26, 1966 appellant was charged by indictment with robbery in violation of 22 D.C. Code § 2901. After entering a plea of not guilty, appellant filed a motion to suppress certain items of evidence. Judge Matthews heard and denied the motion on December 9, 1967. The case was tried before a jury and Judge Keech on April 24 and 25, 1967, and the jury returned a verdict of guilty as charged. On June 16, 1967, appellant was sentenced to serve from eighteen to fifty-four months.

On appeal appellant contends that he was unlawfully searched and that the items seized as a result of the search

were improperly admitted in evidence. The circumstances surrounding appellant's arrest and search are as follows.

On September 5, 1966 at about 4:50 p.m. Miss Maria C. Belda, a 71-year-old retired employee of HEW, was walking westward on Park Road at Pine Street, Northwest, near 16th Street (Tr. 10-12, 23, 39). She noticed coming from the opposite direction a little Latin lady, carrying a baby, being followed closely by two men (Tr. 12, 25). As Miss Belda passed the lady, one of the men grabbed her white pocketbook which she was carrying on her arm (Tr. 12, 14, 15). Struggling to hold onto her pocketbook, she admonished her attacker, "Don't you dare", and he in response pulled her pocketbook from her and knocked her to the ground (Tr. 12). Taking Miss Belda's pocketbook, the robber fled east through an alley toward Hiatt Place (Tr. 12, 18). Miss Belda got off the ground and tried to follow (Tr. 12, 17). She went to Park Road and Hiatt Place where she had a conversation with a lady sitting on a bench who told her the direction in which the fleeing man had gone (Tr. 18, 21, 22). At Park Road and Hiatt Place, she saw the robber running across Hiatt Place, but was unable to see where he went after crossing Hiatt Place (Tr. 19). She then proceeded through an alley to Murphy's Drug Store on 14th Street searching for a policeman (Tr. 20). Unable to locate a policeman, Miss Belda walked across 14th Street and, as she walked toward the Tivoli Theater on her way home, she saw an officer (Tr. 20, 26). She told the policeman what had happened and described the robber to the policeman as being a Negro, wearing yellow trousers and a yellow shirt (Tr. 28, 29, 30). Miss Belda could not recall giving the officer a description of the robber's height or size (Tr. 28, 29). The officer then called the station and put Miss Belda in his car and drove around the neighborhood (Tr. 20, 26).

At approximately 4:55 p.m. a police radio lookout was broadcast and was heard by Detective Vertice J. Gore and Officer Jasper E. Fletcher, who were patrolling in

the vicinity of 16th and Fuller Streets in a car driven by Officer Fletcher (Tr. 61, 69, 72). The broadcast reported a robbery at 16th and Pine Streets, Northwest, and the suspect was described as a Negro male, about six feet, medium complexion, medium build, wearing a yellow shirt and yellow trousers (Tr. 68, 78, 79). In response to the lookout, Officer Fletcher drove to 16th and Irving, then to Irving and 14th, and then south on 14th Street (Tr. 72). At the southwest corner of 14th and Harvard Streets—some three and one half blocks from the scene of the robbery—the officers observed appellant who fitted the description of the robber given in the lookout (M. Tr. 8;[1] Tr. 73). Officer Fletcher pulled the car to the curb, stopped, and as both officers got out, appellant started walking off in the opposite direction (Tr. 63, 73). The officers approached appellant, informed him that he matched the description of a man who had robbed a person in the area, and asked him to come with them so that he could confront the victim (Tr. 65, 73). The officers brought appellant to the 1500 block of Columbia Road where Miss Belda identified appellant as the man who robbed her (Tr. 74). Appellant was then searched and from his pockets the officers removed some money, a rosary, two gold medals and other personal effects (Tr. 74). Miss Belda identified the rosary and medals as belonging to her and testified that these items were in her pocketbook when it was taken (Tr. 14-15). Before the Government rested its case, the items removed from the person of appellant after his arrest were received in evidence over appellant's objections (Tr. 89, 90).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment of the United States Constitution provides:

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[1] "M. Tr." refers to the transcript of the hearing on appellant's motion to suppress.

> The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

SUMMARY OF ARGUMENT

Appellant argues that the Government failed to establish probable cause for his apprehension and arrest in that the Government failed to prove by direct evidence that the lookout, pursuant to which appellant was apprehended, was based on the victim's report of the crime. The Government established that a police officer received a report from the victim that her purse was snatched by an assailant whom she described, that the officer reported the offense to headquarters, that a robbery lookout was broadcast describing the assailant, that appellant matched the description given and was found about 20 minutes after the offense within three and one half blocks of the scene of the robbery, and that the officers who apprehended appellant did so pursuant to the lookout. We do not think it fatal that the Government did not prove by direct evidence that the lookout was in fact based on the victim's report. We think so much can be inferred from the sequence of events.

Furthermore, whatever may be said of the victim's report to the police, the evidence below makes it abundantly clear that the police department's source of information was a first-hand observer of the robbery. Who but the victim or an eyewitness could have told the police of the purse snatching and described the assailant several minutes after the robbery occurred? This, then, is not an "informer" case and does raise problems unique to those cases. Furthermore, here the information relied on by the police was corroborated in some respects. As we noted earlier, appellant, who matched the description of

the suspect, was found three and one half blocks from the scene of the robbery within 20 minutes after the offense.

And finally, we note that appellant was not searched when initially apprehended, but was brought to the victim and, after identified as her assailant, was arrested and searched. It may well be that even if the information within the knowledge of the police was not sufficient enough to support a formal arrest, it provided an ample basis for taking appellant a few blocks for the purpose of a confrontation with the victim.

ARGUMENT

The Government established that the police had probable cause to apprehend appellant, take him a few blocks where he could confront the victim and, upon being identified by the victim as the purse snatcher, arrest and search him.

(Tr. 10-12, 18, 20, 21, 22, 23, 28, 29, 30, 39, 68, 69, 71, 72, 77, 78, 79; M. Tr. 8)

Relying on cases in which the reliability of an informer's tip was challenged,[2] appellant contends that the Government never proved by direct evidence that the lookout, pursuant to which appellant was apprehended, was based on the victim's report of the crime to the police. He argues that, since there is no direct evidence to show the source of the information radioed to the arresting officers, the Government failed to sustain its burden of proving that the original source of the information which led to appellant's apprehension was sufficiently trustworthy to form a basis for probable cause.

In brief, the sequence of events which led to appellant's apprehension was as follows. At approximately 4:50 p.m. Miss Belda's purse was snatched as she was walking west-

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[2] *Beck* v. *Ohio*, 379 U.S. 89 (1964); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Wrightson* v. *United States*, 95 U.S. App. D.C. 390, 222 F.2d 556 (1955).

ward on Park Road at Pine Street, Northwest, near 16th Street (Tr. 10-12, 21, 23, 39). She tried to follow the robber and made her way to Park Road and Hiatt Place where she was told by a woman the direction in which the man was running (Tr. 18, 21, 22). She then proceeded to Murphy's Drug Store on 14th Street in search of a policeman (Tr. 20). Not finding a policeman there, she walked across 14th Street, found a policeman, and told him of the robbery and described the robber as being a Negro, wearing yellow trousers and a yellow shirt (Tr. 20, 28, 29, 30). The officer called the station presumably to report the robbery (Tr. 20).

A robbery lookout was broadcast at approximately 4:55 p.m. in which the assailant was described as a Negro male, about six feet, medium complexion, medium build, wearing a yellow shirt and yellow trousers (Tr. 68, 78, 79). It was pursuant to this dispatch that appellant was apprehended about 15 or 20 minutes later three and one half blocks from the scene of the robbery and subsequently arrested and searched (M. Tr. 8, Tr. 69).

First, we do not think in a case such as this where there is logical sequence of events—robbery, victim's report to the police, police report to headquarters, and a radio dispatch—that it is necessary for the Government to prove by direct evidence that the radio dispatch was in fact based on the victim's report. We think so much can be inferred from the evidence. Appellant argues that such an inference is not permissible here because the victim testified that the robbery occurred at approximately 4:50 p.m. and one of the officers who apprehended appellant testified that he received the lookout at approximately 4:55 p.m.—a time lapse too short to account for the victim's movements from the point of robbery to the point where she reported the robbery to a policeman.[3] We think appellant's argument circumscribes too severely the meaning of the testimony on which he relies. The time of the

[3] Appellant's Brief at 27-28.

robbery and the time the lookout was received were estimated by the witnesses (Tr. 11, 69, 72). The testimony relied on by appellant was not intended to establish a precise time for the robbery and lookout.[4] Furthermore, even if the testimony of Miss Belda could be construed as appellant would have it construed, we do not think that Miss Belda, a woman over 70, could be expected to give the exact time she was attacked.[5]

Second, even if it would not be permissible to infer that the victim was the source of the police department's information, we think we can safely assume that this is not an informer case—a case in which the police were tipped by a member of the underworld. Who but the victim or an eye witness could have told the police of the purse snatching and described Miss Belda's assailant at a time after the robbery occurred?[6] In short, whatever may be said of the victim's report to the police, the evidence below makes it abundantly clear that the police department's source was a first-hand observer of the robbery. In *Brown* v. *United States*, 125 U.S. App. D.C. 43, 46, 365 F.2d 976, 979 (1966) this Court said:

> That the information came from an unknown victim of the crime did not preclude the policeman's having probable cause to arrest appellant on the basis

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[4] By way of contrast, we note that Detective Gore said appellant was apprehended at approximately 5:05 p.m. while Private Fletcher estimated the time to be 5:20 p.m. (Tr. 69, 71, 77, 79). Both officers were riding in the same car and both participated in apprehending appellant.

[5] We note that the lookout described the robbery suspect in more detail than Miss Belda remembered describing her assailant to the police. We think this discrepancy is adequately explained by Miss Belda's age and her apparent inability at trial to remember the details surrounding the robbery. We note also that Miss Belda's testimony when read in its entirety indicates that she was having difficulty answering questions and recalling the events on the day in question in precise terms.

[6] It seems clear that the police were notified of the purse snatching after the robbery occurred.

> of it. Although the police could not here judge the reliability of the information on the basis of past experience with the informant, compare Draper v. United States, 358 U.S. 304 (1959), the victim's report has the virtue of being based on personal observations, a factor stressed in Aguilar v. United States, 378 U.S. 108 (1964), and is less likely to be colored by self interest than is that of an informant.

We think *Brown* supports the proposition that for purposes of establishing probable cause the police are entitled to rely on information coming from what purports to be an anonymous victim or observer of a crime.[7] See also *Payne* v. *United States*, 111 U.S. App. D.C. 94, 294 F.2d 723, *cert. denied*, 368 U.S. 883 (1961);[8] *Cormier* v. *United States*, 137 A.2d 212 (D.C. Ct. App. 1957);[9] *Kennedy* v. *United States*, 122 U.S. App. D.C. 291, 353 F.2d 462 (1965);[10] *cf. Naples* v. *United States*, 113 U.S. App. D.C.

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[7] For purposes of establishing probable cause we see no distinction between receiving information from a victim or an observer, for both relate first-hand information and neither suffers from the self-interest of an informer.

[8] In *Payne* the arresting officer testified that some one described only as a "citizen" told him that some person tried to "flimflam" him and pointed to a car emerging from a parking lot at a high rate of speed and said "there's the man there," indicating Payne, the driver. The car was then pursued and stopped and Payne was arrested. The Court held that probable cause for the arrest existed and found no infirmity in the officer's reliance on the victim's report although the officer had no information to attest to the victim's reliability or veracity.

[9] In *Cormier*, a nine year old girl approached two police officers. In a hysterical state, she told the police officers that she had gone to look for her fourteen-year-old sister in a certain house and had been chased out and that there was a man with a gun in the house. She also told the police that this man's car, bearing Virginia license plates, was parked in front of the house. The court held that this was sufficient to support a reasonable belief that an offense was being committed in the house. The officers in *Cormier* had no basis for their belief other than what was related to them by the nine-year-old girl.

[10] In *Kennedy*, bystanders had captured the defendant who had fled from a building where some women's screams were heard. The

281, 283, 307 F.2d 618 (1962); *United States* v. *Segura*, 244 F. Supp. 186 (E.D. La. 1965). If the rule were otherwise, we think it would place an unreasonable restraint on the police, for it would force them, when informed by what purports to be an anonymous victim or witness of a crime, to suspend pursuit of the suspect prior to interviewing their source and checking his or her veracity.

Furthermore, here the information given the police was corroborated in some respects. Appellant, who matched the description of the suspect given to the police, was found three and a half blocks from the scene of the robbery within 15 or 20 minutes after the offense. *Cf. Draper* v. *United States*, 358 U.S. 307 (1959).

And finally we note that appellant was not searched when apprehended but was brought immediately to the victim where he could be viewed for the purpose of identification.[11] He was not formally arrested or searched until after he was identified by the victim as her assailant. It may well be that even if the information within the knowledge of the police was not sufficient enough to support an arrest when appellant was apprehended at the 14th and Harvard Streets, it was sufficient enough to support taking appellant a few blocks for the purpose of a confrontation with Miss Belda.[12] See *Liles* v. *United*

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police arrived having been informed of a possible robbery and looked inside and saw two women handcuffed to a staircase. Seeing the women handcuffed to the staircase corroborated the officers' information an offense of some kind had been committed, but the officers depended upon the bystanders' capture of the defendant to support their belief that the defendant was the man who committed the offense.

[11] This procedure has been specifically approved by this Court. See *Wise* v. *United States*, —— U.S. App. D.C. ——, 383 F.2d 206 (1967).

[12] We do not think every time the police exercise a restraint over a citizen that an arrest in the constitutional sense takes place. There are many circumstances that fall short of probable cause for arrest but which demand investigation and, in our view, justify brief detentions and reasonable inquiries. See e.g. *Dorsey* v. *United*

States, D.C. Cir. 20,807, decided November 16, 1967; *cf.*, *Bailey* v. *United States*, D.C. Cir. No. 20,623, decided December 14, 1967 (concurring opinion of Judge Leventhal); *United States* v. *Lewis*, 362 F.2d 759 (2d Cir. 1966).

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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States, 125 U.S. App. D.C. 355, 372 F.2d 928 (1967); *Brown* v. *United States*, 125 U.S. App. D.C. 43, 46 n.4, 365 F.2d 976, 979 n.4 (1966); *Green* v. *United States*, 104 U.S. App. D.C. 23, 259 F.2d 180 (1958), *cert. denied*, 359 U.S. 917 (1959); *Cotton* v. *United States*, 371 F.2d 385, 391-92 (9th Cir. 1967); *Wilson* v. *Porter*, 361 F.2d 412, 415 (9th Cir. 1966); *Busby* v. *United States*, 296 F.2d 328, 331 (9th Cir. 1961), *cert. denied*, 369 U.S. 876 (1962). We think the permissive degree to which an officer may detain a citizen on grounds short of probable cause to arrest is a function of the circumstances which lead to the detention. For example, circumstances which support a brief on the street detention for the purpose of a limited inquiry might not suffice when the detention is more than brief and expands in scope but falls short of arrest. The test, it seems to us, is one of reasonableness. See *Dorsey* v. *United States*, *supra*.

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